

REMARKS

The Final Office Action mailed October 27, 2008 has been received and reviewed. Each of claims 79-128 stands rejected. Claims 79-80, 83-93, 95-105, and 110-120, and 123-128 have been amended herein. Claims 81, 82, 93, 94, 108, 109, 121, and 122 have been canceled herein, rendering the rejections thereof moot. Claims 79-80, 83-92, 95-107, 110-120, and 123-128 remain pending. Applicants respectfully request reconsideration of the present application in view of the above amendments and the following remarks.

Rejections based on 35 U.S.C. § 103

A. Applicable Authority

To sustain a rejection of a claim under 35 U.S.C. § 103(a), the Examiner must find that a preponderance of the evidence supports a finding of obviousness. The Examiner bears the initial burden of showing that the reference teachings establish a *prima facie* case of obviousness. “In view of all factual information, the examiner must . . . make a determination whether the claimed invention ‘as a whole’ would have been obvious at that time to that person.” MPEP § 2142. In making that determination, the Examiner must consider every word in each claim. *In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970).

“The key to supporting any rejection under 35 U.S.C. 103 is the clear articulation of the reason(s) why the claimed invention would have been obvious.” MPEP § 2142. “The analysis supporting a rejection under 35 U.S.C. 103 should be made explicit.” *Id.*, citing *KSR Int’l Co. v. Teleflex Inc.*, 127 S. Ct. 1727. As stated by the Federal Circuit, “rejections on obviousness cannot be sustained with mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of

obviousness. *In re Kahn*, 441 F. 3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006). See also *KSR*, 127 S. Ct. at 1741 (quoting Federal Circuit statement with approval).

B. The Claimed Invention as a Whole is Nonobvious over the Cited Art of Record

The invention recited in the pending claims is fundamentally different from the cited art of record, and consequently, the cited art of record fails to render any of the pending claims obvious. “[T]he question under 35 U.S.C. 103 is . . . whether the claimed invention as a whole would have been obvious.” MPEP 2141.02(I), citing *Schenck v. Nortron Corp.*, 713 F.2d 782, 218 USPQ 698 (Fed. Cir. 1983). Additionally, “[a] prior art reference must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention.” MPEP § 2141.02(VI), citing *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983), cert. denied, 469 U.S. 851 (1984).

Each of the amended independent claims 79, 91, 103, and 116 recites a step of “storing a plurality of items on a user’s computing device, wherein the plurality of items are arranged according to a physical file system structure of an operating system located on the user’s computing device.” Further, each of the amended independent claims recites that sharing items means allowing the sharees direct access to the user’s computing device on which the one or more items are stored. The invention recited in the pending claims is thus directed to sharing items that are stored on a user’s computing device by allowing direct access to that computing device. The asserted combination of references fails to teach or suggest this important aspect of the claimed invention.

The Final Office Action fails to directly respond to this argument, which was previously presented in Remarks to an Amendment filed on July 10, 2008. However, the Final

Office Action cites various portions of Huang as disclosing the features of storing the items on a user's computing device and sharing the items by allowing sharees direct access to the user's computing device. As clearly indicated in the language cited by the Final Office Action, the teachings of Huang are fundamentally different than these aspects of the claimed invention. Most importantly, for the purposes of sharing items, Huang discloses that "files or items in the folder or directory . . . are stored in the file server or in a central location or in different databases on multiple file servers." *Final Office Action*, citing *Huang*, col. 8, ll. 36-67 (emphasis added).

Huang's disclosures simply do not fairly contemplate storing items on a user's computer and sharing those items by allowing sharees direct access to that same user's computer, as recited in the independent claims. See, e.g., *Huang*, col. 8, ll. 36-67 (explaining that "data associated with the users is stored in one or more databases, including user login information database 242, e-mail database 274, user information database 278, and user file database 282" and further that "the files and folders may be stored in user file database 282" or "[a]lternatively, the entire record may be stored on one database at a central server") (emphasis added).

To the contrary and as indicated above, Huang's teachings are fundamentally different than the invention recited in the claims. Huang discloses a virtual computing environment that "is supported by a network of servers." *Huang*, col. 2, lines 17-20. In direct contrast to the claimed methods of sharing items stored on a user's computing device, Huang's virtual desktop provides access to items that are maintained in databases housed on network servers. See, e.g., *Huang*, col. 4, lines 31-67 (explaining that "[b]ackend servers 260 [] couple to a bus 262 that also interconnects a viewer converter 270, an e-mail server 272, a database server 276, a file server 280, and an application server 290") (emphasis added); see, also, *Id.* at col. 7, lines 57-65; col. 8, lines 36-62; col. 8, line 64 – col. 9, line 6; col. 9, lines 35-38; col. 11,

lines 10-14, 50-67; and col. 12, lines 1-37. Huang fails to teach or suggest storing items on a user's computing device and sharing those items with others by allowing direct access to the user's computing device, but rather contemplates sharing items in a database at a server and sharing the items by providing access to the files stored in the database at the server.

Moreover, Huang explicitly teaches away from the claimed invention, suggesting that the important aspect of sharing items stored on a user's computing device would have been impossible. *Huang*, col. 8, line 67 – col. 9, line 3 (“[B]ecause the files are maintained in a network environment, the invention provides other file manipulation capabilities not available on the desktop PC, including file sharing, access control, and others.”) (emphasis added). Thus, Huang expressly teaches away from the claimed invention and specifically fails to teach or suggest storing items on a user's computing device and sharing those items in the manner recited in the claims. Accordingly, it is apparent that the claimed invention provides features that would not have been obvious to those of ordinary skill in the art, and more specifically would not have been obvious to the inventors of the system described in Huang. Additionally, nothing in Vincent or Ermel remedies Huang's failure to disclose or fairly suggest these aspects of the present invention, nor is it relied upon as doing so.

Accordingly, it is respectfully submitted that Huang, Vincent, and Ermel, whether taken alone or in combination, fail to teach or suggest all of the limitations of amended independent claims 79, 91, 103, and 116, and that these claims are not obvious in view of the asserted combination of references. Each of claims 80 and 83-90 depends, either directly or indirectly, from amended independent claim 79; each of claims 92 and 95-102 depends, either directly or indirectly, from amended independent claim 91; each of claims 104-107 and 110-115 depends, either directly or indirectly, from amended independent claim 103; and each of claims

117-120 and 123-128 depends, either directly or indirectly, from amended independent claim 116. Accordingly, it is respectfully submitted that, based on their respective dependency from claims 79, 91, 103, and 116, claims 80, 83-90, 92, 95-102, 104, 110-115, 117-120, and 123-128 are nonobvious over the asserted combination of references for at least the above-cited reasons. *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) (“If an independent claim is nonobvious under 35 U.S.C. 103, then any claim depending therefrom is nonobvious.”); *see also* MPEP § 2143.03. As such, withdrawal of the 35 U.S.C. § 103(a) rejection of claims 79-80, 83-92, 95-107, 110-120, and 123-128 is respectfully requested.

C. Rejection of Claims 79-102 over Huang et al., U.S. Patent No. 6,571,245 in view of Vincent, U.S. Patent No. 4,881,179 and further in view of Ermel et al., U.S. Patent No. 5,835,094

Claims 79-102 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Huang et al., U.S. Patent No. 6,571,245 (hereinafter “Huang”), in view of Vincent, U.S. Patent No. 4,881,179 (hereinafter “Vincent”), and further in view of Ermel et al., U.S. Patent No. 5,835,094 (hereinafter “Ermel”). Claims 81, 82, 93, and 94 have been canceled herein, rendering the rejections thereof moot. As the asserted combination of references fails to teach or suggest each of the recitations of claims 79-80, 83-92, and 95-102, Applicants respectfully request withdrawal of the 35 U.S.C. § 103(a) rejections thereto.

2. Claims 79-80 and 83-90

Independent claim 79, as amended herein, recites in part, “storing a plurality of items on a user’s computing device, wherein the plurality of items are arranged according to a physical file system structure of an operating system located on the user’s computing device” and “receiving via the operating system a user request to share one or more of the plurality of

items stored on the user's computing device that are represented by the virtual folder with one or more sharees, wherein sharing the one or more items comprises allowing the one or more sharees direct access to the user's computing device on which the one or more items are stored." As discussed above with respect to the claimed invention as a whole, Huang fails to teach or suggest these claimed features. Additionally, Vincent and Ermel fail to cure the deficiencies of Huang in this regard, nor are they relied upon as doing so.

Accordingly, it is respectfully submitted that Huang, Vincent, and Ermel, whether taken alone or in combination, fail to teach or suggest all of the limitations of amended independent claim 79 and that this claim is not obvious in view of the asserted combination of references. Each of claims 80 and 83-90 depends, either directly or indirectly, from amended independent claim 79. Accordingly, it is respectfully submitted that, based on their dependency from claim 79, claims 80 and 83-90 are nonobvious over the asserted combination of references for at least the above-cited reasons. *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) ("If an independent claim is nonobvious under 35 U.S.C. 103, then any claim depending therefrom is nonobvious."); *see also* MPEP § 2143.03. As such, withdrawal of the 35 U.S.C. § 103(a) rejection of claims 79-80 and 83-90 is respectfully requested.

3. Claims 91-92 and 95-102

Independent claim 91, as amended herein, recites in part "storing a plurality of items on a user's computing device, wherein the plurality of items are arranged according to a physical file system structure of an operating system located on the user's computing device," "receiving via the operating system a user request to share one or more of the items stored on the user's computing device . . . wherein sharing the one or more items comprises allowing the one or more sharees direct access to the user's computing device on which the one or more items are

stored,” and “setting permissions . . . to provide the one or more sharees direct access to said one or more shared items without moving the one or more items from the user’s computing device.”

As discussed above with respect to amended independent claim 79, the asserted combination of references fails to teach or suggest storing items on the user’s computing device and sharing the items by allowing direct access to that computer device. It follows that the asserted combination of references fails to teach or suggest providing that direct access without moving the items from the user’s computing device.

Amended independent claim 91 further recites, in part, “providing an option for toggling between the location-independent view and a physical location-dependent view corresponding to the physical file system structure of the operating system located on the user’s computing device.” Applicants are unable to find any disclosure in the cited art of record that fairly teaches or suggests this claimed feature.

Accordingly, it is respectfully submitted that Huang, Vincent, and Ermel, whether taken alone or in combination, fail to teach or suggest all of the limitations of amended independent claim 91 and that this claim is not obvious in view of the asserted combination of references. Each of claims 92 and 95-102 depends, either directly or indirectly, from amended independent claim 91. Accordingly, it is respectfully submitted that, based on their dependency from claim 91, claims 92 and 95-102 are nonobvious over the asserted combination of references for at least the above-cited reasons. *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) (“If an independent claim is nonobvious under 35 U.S.C. 103, then any claim depending therefrom is nonobvious.”); *see also* MPEP § 2143.03. As such, withdrawal of the 35 U.S.C. § 103(a) rejection of claims 91-92 and 95-102 is respectfully requested.

D. Rejection of Claims 103-128 over Huang in view of Vincent

Claims 103-128 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Huang in view of Vincent. Claims 121 and 122 have been canceled herein, rendering the rejections thereof moot. As the asserted combination of references fails to teach or suggest each of the recitations of claims 103-120 and 123-128, Applicants respectfully request withdrawal of the 35 U.S.C. § 103(a) rejections thereto.

1. Claims 103-115

Independent claim 103, as amended herein, recites in part, “storing a plurality of items on a user’s computing device, wherein the plurality of items are arranged according to a physical file system structure of an operating system located on the user’s computing device” and “receiving at the operating system a request to share one or more of the items . . . wherein sharing the one or more items comprises allowing the one or more sharees direct access to the user’s computing device on which the one or more items are stored.” As discussed above with reference to independent claims 79 and 91, the asserted combination of references fails to teach or suggest the claimed features.

Accordingly, it is respectfully submitted that Huang and Vincent, whether taken alone or in combination, fail to teach or suggest all of the limitations of amended independent claim 103 and that this claim is not obvious in view of the asserted combination of references. Each of claims 104-115 depends, either directly or indirectly, from amended independent claim 103. Accordingly, it is respectfully submitted that, based on their dependency from claim 103, claims 104-115 are nonobvious over the asserted combination of references for at least the above-cited reasons. *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) (“If an independent claim is nonobvious under 35 U.S.C. 103, then any claim depending therefrom is

nonobvious.”); *see also* MPEP § 2143.03. As such, withdrawal of the 35 U.S.C. § 103(a) rejection of claims 103-115 is respectfully requested.

2. Claims 116-120 and 123-128

Independent claim 116, as amended herein, recites in part, “storing a plurality of items in on a user’s computing device, wherein the plurality of items are arranged according to a physical file system structure of an operating system located on a user’s the user’s computing device” and “receiving at the operating system a request to share one or more of the items . . . wherein sharing the one or more items comprises allowing the one or more sharees direct access to the user’s computing device on which the one or more items are stored.” As discussed above with reference to independent claims 79, 91, and 103, the asserted combination of references fails to teach or suggest the claimed features.

Accordingly, it is respectfully submitted that Huang and Vincent, whether taken alone or in combination, fail to teach or suggest all of the limitations of amended independent claim 116 and that this claim is not obvious in view of the asserted combination of references. Each of claims 117-120 and 123-128 depends, either directly or indirectly, from amended independent claim 116. Accordingly, it is respectfully submitted that, based on their dependency from claim 116, claims 117-120 and 123-128 are nonobvious over the asserted combination of references for at least the above-cited reasons. *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) (“If an independent claim is nonobvious under 35 U.S.C. 103, then any claim depending therefrom is nonobvious.”); *see also* MPEP § 2143.03. As such, withdrawal of the 35 U.S.C. § 103(a) rejection of claims 116-120 and 123-128 is respectfully requested

Applicants respectfully submit that each of claims 79-80, 83-92, 95-107, 110-120, and 123-128 is believed to be in condition for allowance and such favorable action is requested.

CONCLUSION

For at least the reasons stated above, claims 79-80, 83-92, 95-107, 110-120, and 123-128 are in condition for allowance. Applicants respectfully request withdrawal of the pending rejections and allowance of the claims. If any issues remain that would prevent issuance of this application, the Examiner is urged to contact the undersigned – 816-474-6550 or jgolian@shb.com (such communication via email is herein expressly granted) – to resolve the same. It is believed that no fee is due, however, the Commissioner is hereby authorized to charge any amount required to Deposit Account No. 19-2112.

Respectfully submitted,

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